

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TREVOR WILLIAMS,

Plaintiff,

v.

REMINGTON ARMS COMPANY,
INC.,

Defendant.

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CIVIL ACTION NO. 3-05CV1383-D

**INTERVENOR'S RESPONSE TO PLAINTIFF'S MOTION
TO ENFORCE SETTLEMENT AND CONSENT TO
PARTIAL PAYMENT TO TREVOR WILLIAMS
AND BRIEF IN SUPPORT THEREOF**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Intervenor placed all parties and the court on notice of his contract claim on October 18, 2006 when it filed its Intervention. While at the time of the intervention the claim was one in contract, today with an agreed, and at this point partially funded, settlement between the plaintiff and defendant, the claim is an assignment of 40% (forty percent) of the gross settlement amount, as well as its expenses incurred in prosecuting this claim.

I.

Intervenor does not want to see a delay in payment to plaintiff, Mr. Trevor Williams, of his portion of the settlement, after attorneys fees and expenses. Accordingly, Intervenor consents to payment of the settlement to Mr. Williams with 40% (forty percent) of the gross settlement with Defendant reserved to satisfy his assignment. The remaining 40% (forty percent) of the settlement should be held in trust by Defendant Remington or placed in the registry of the court until the attorney fee dispute is resolved.

II.

Intervenor's assignment of forty percent of the underlying tort claim should be acknowledged by Defendant holding this amount of the settlement in trust or by placing 40% (forty percent) of the gross settlement amount into the registry of the court. Plaintiff's *res judicata* argument ignores the three different options that are available in this type of situation.

. . .where a plaintiff and defendant, with knowledge that an attorney has been granted an interest in the suit [the assignment], settle the case without recognizing the attorney's interest, the attorney has several choices: (1) he may prosecute the suit against the defendant in his own name or the plaintiff's name, prove liability and damages owed by the defendant to the plaintiff, and recover his proportionate share from the judgment; (2) he may sue the client for his share of the sum paid in settlement . . .; or (3) he may ratify the settlement between the plaintiff and defendant, without the necessity of proving

liability and damages in the underlying tort suit by seeking to recover only his proportionate share of the settlement funds.¹

Even if the first route of recovery on the assignment is *res judicata*, the other two are not. Since part of this settlement was reached and at least partially funded without notice to the Intervenor who has an assignment, these three different options for collection of the assignment are available to Intervenor.

Intervenor does not seek any interest in or payment from monies that would ordinarily be distributed to the individual Plaintiff Trevor Williams after payment of his attorney's fees and expenses. Intervenor understands that some monies have already been paid to the Plaintiff and that Plaintiff is entitled to additional proceeds from what is purported to be \$925,000 still to be paid by Remington's insurer. Intervenor has no objection to the payment of the remaining funds due to the plaintiff Trevor Williams individually so long as 40% (forty percent) of the gross settlement is held in trust by Remington's insurer or deposited into the registry of the Court pending a final determination as to fair distribution of attorney's fees in this case.

¹*Honeycutt v. Billingsley*, 992 S.W. 2d 570, 585 (Tex. App.- Houston [1st Dist.] 1999, pet. denied; *see also Law Offices of Windle Turley, P. C. v. Ghiasinejad*, 109 S.W. 3d 68, 72 (Tex. App. - Fort Worth 2003, no pet.).

WHEREFORE, Intervenor gives notice of the consent to pay all monies due and owing to Trevor Williams individually except for 40% (forty percent) of the gross settlement to be held in trust by the Defendant or placed into the registry of the Court until a final determination is made as to a fair distribution of attorney's fees.

Respectfully submitted,

TURLEY LAW FIRM

/s/

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